DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Region 10
2201 Sixth Avenue, MS/RX-43
Seattle, Washington 98121

Dennis Braddock, Secretary
Department of Social and Health Services
PO Box 45010
Olympia, Washington 98504-5010

Dear Mr. Braddock:

The state of Washington has requested to replace its current Community Alternatives Program (CAP) Waiver 0050 with four new home and community-based services waiver programs for individuals with mental retardation and developmental disabilities as authorized under section 1915(c) of the Social Security Act. The four new waivers – the Basic Waiver, the Basic Plus Waiver, the Core Waiver, and the Public Safety Waiver – propose to provide an array of waiver services. These services may include personal care, respite care, residential habilitation, day habilitation, supported employment, community access, person to person services, community guide, environmental accessibility adaptations, transportation, specialized medical equipment and supplies, behavior management and consultation, staff/family consultation and training, emergency assistance, residential habilitation, skilled nursing, and extended state plan physical therapy, occupational therapy and speech, hearing and language. These waiver services will be provided as needed to those who require an Intermediate Care Facility for the Mentally Retarded (ICF/MR) level-of-care.

These waivers do propose some changes in the approved package of waiver services currently offered under the CAP Waiver. The existing CAP Waiver provides most of the aforementioned services but also provides prevocational services, attendant care, private duty nursing, adult foster care, and extended state plan physician services, adult day health and prescribed drugs. The waivers also request to waive Section 1902(a)(10)(B) which addresses the comparability of services. The proposed waivers have been assigned the Centers for Medicare & Medicaid Services control numbers 0408 – Basic Waiver, 0409 – Basic Plus Waiver, 0410 – Core Waiver and 0411 – Public Safety Waiver, respectively.

After review of the submitted material for this amendment, we are unable to make a final determination. We have had several communications with your staff concerning the proposed changes. Your staff has been instrumental in responding to our concerns. Nevertheless, we need additional information. In accordance with Section 1915(f)(2) of the Social Security Act, we are requesting additional clarifying information. Processing this amendment will cease until a response is received to the request listed on the attached pages.

Under section 1915 (f)(2) of the Act, a waiver amendment must be approved, denied or additional information requested within 90 days of receipt or the request will be deemed approved. However, this request for additional information will stop the 90-day clock, which will restart at day one once the information is received.

If you have any questions concerning this matter please contact Lydia Skeen at (206) 615-2339 or by e-mail at lskeen@cms.hhs.gov. or Lavern Ware at lware@cms.hhs.gov or 410-786-5480.

Sincerely,

Karen O'Connor,
Associate Regional Administrator
Medicaid and Children's Health

Cc: Linda Rolfe, DDD
Chris Imhoff, DDD
LaVern Ware, CMS

General Comments

1. Washington is proposing to implement four new waivers to replace the existing Community Alternatives Program (CAP) Waiver which provides waiver services to individuals with developmental disabilities who meet an Intermediate Care Facility for the Mentally Retarded (ICF/MR) level-of-care. The four new waivers are the Basic, Basic Plus, Core and Public Safety Waivers. However, the four new waivers do not provide all of the waiver services that currently exist in the approved CAP Waiver. The proposed new waivers will no longer include prevocational services, attendant care services, private duty nursing, adult foster care, alternative living or the extended State Plan services of physician services, prescribed drugs and adult day health. Please describe in detail how individuals who are currently having their needs met by receiving these services will be able to continue to have their needs met and health and welfare assured when transitioned into the new waivers. In addition, please indicate if there is any litigation/complaints in the state concerning eliminating certain waiver services, including extended state plan services.

2. Will Washington continue to operate the CAP Waiver and the four new waivers simultaneously during a transition period before the CAP Waiver is terminated? If so, how long will the transition period be?

3. Please describe the process to be utilized to transition the current CAP Waiver participants to the four proposed waivers. This description should include how Washington will inform the waiver participants about the transition and their appeal rights regarding the transition as well as, when necessary, the change in the waiver services in the plan of care. Please also include in this description how the state will determine which of the four waivers individuals will be served. Does Washington have sufficient human resources to facilitate the transition from the current waiver to the proposed waivers? Will all of the waiver participants in the existing waiver be transitioned into one of the newly proposed waivers? In other words, when the current waiver participants are transitioned into the proposed waivers, will any of the existing waiver participants lose waiver eligibility? If so, what will be Washington's process for informing them of the loss of waiver eligibility, informing them of their right to appeal and transitioning them from the waiver to other alternatives in the community? Also, how will the state assure health and welfare of individuals on the waiver, as they are transitioned to other alternatives in the community? What other alternatives exist in the community? Will these alternatives be sufficient to meet the needs of individuals transitioning from waiver services?

4. During conference calls, Washington indicated that individuals will be able to transition between the four waivers as their needs change. Please describe the process by which this will occur. How will the state ensure that there is adequate capacity on each of the waivers for such transitions? What will happen in the

event that an individual's needs can no longer be met on one waiver and there is inadequate capacity on a more appropriate waiver?

5. It is our understanding that the newly proposed form for determining the appropriate level-of-care is not the same form that is used to determine level-of-care when an individual is seeking admission to an ICF/MR. Although this may be allowed, the forms must be comparable. If an individual was determined to have met an ICF/MR level-of-care utilizing the forms developed for these waivers, but the applicant or the applicant's legal representative exercised his/her freedom of choice and selected admission to an ICF/MR when given the option, would the waiver form be honored by the ICF/MR evaluators or would the applicant have to complete another form? If yes, does the form used for the institution and the form used for the waiver yield the same outcome? (In other words, would an individual who was determined to have met the level-of-care for the waiver also be determined to have met the level-of-care for the institution?) Describe how the two processes for determining level-of-care are comparable.

6. What is the frequency in which the case managers are trained? Are training sessions being planned for the case managers regarding the four proposed waivers? If so, what is the schedule for these training sessions?

7. During one of the conference calls, Washington indicated that the Family/Staff Consultation and Training could include financial coverage for family members of the participants and staff to attend conferences. Medicaid reimbursement is allowed for training of family members, which is specific enough to allow an individual to properly care for the waiver participant, such as crisis behavior management techniques. However, Medicaid cannot pay for room and board, such as meals and lodging for hotel. In addition Medicaid cannot pay for attendance at conferences, such as state MR/DD conferences, that do not provide training in specific care giving skills directed to the needs of a specific individual. The waiver program cannot be used for this type of training for staff. Please modify this service description.

8. The modified definition of "Other Medical Services" now appears to only include specialized psychiatric services. Thus, specialized psychiatric services should be listed and defined as a separate waiver service rather than contained in "Other Medical Services." Please change "Other Medical Services" to reflect the service title of "Specialized Psychiatric Services." Additionally, please add a description of these specialized psychiatric services not available under the state plan or the 1915(b) Mental Health Waiver to the service definition. This service and the appropriate corresponding information should also be added to Appendix B-2 Provider Qualifications and to Appendix G.

9. Although HCBS Waivers must be a cost neutral alternative to the institution, the disparity between Factors D and G is somewhat unusually large. Please explain. Please provide documentation that the amount of waiver services anticipated to be

received will be sufficient to maintain the health and welfare of waiver participants who but for the waiver would require institutionalization.

10. Community Access Supports and Community Guide/Person-to-Person Services under he subheading of Day Habilitation were appropriately removed from 11.g in the Executive Summary of the waiver format and added to 11.t but was not consistently moved in Appendix B-2 Definition of Services from 11.g to 11.s (they are still listed below "Habilitation"). Please amend Appendix G to include these services. For the Basic and Basic Plus Waivers, will a benefit package cost cap apply?

11. As was discussed in a recent conference call, only the Community Guide and the Person to Person services needed to be moved; Community Access services was appropriate in the Habilitation benefit package. However, it is also appropriate listed below "Other Services" if that is your current preference. Please advise under which benefit package you would like Community Access services to be included and annotate the services in the appropriate benefit packages. In addition, because the services were added to a benefit package with an existing financial cap (see the Basic Plus Waiver), please clarify if the financial cap will need to be increased to accommodate these additional services.

12. The top of each Factor D chart specifies that the waiver years are "renewal" years. To accurately depict this waiver as a new waiver and not a renewal, please change to "waiver year."

13. The executive summary and Appendix B lists specialized medical equipment and supplies as a service, but it is listed as specialized medical equipment and assistive devices in Appendix G. The terminology should be changed (using either service name) throughout the application to maintain consistency.

General Comments - Quality

14. For the waiver participants who choose to hire, fire, and train personal care aides, describe the back-up system(s) which supports them. Is the back-up system statewide?

15. Is support and training available to waiver participants and/or their legally responsible representative on supervisory activities such as hiring, training, complaint resolution and provider termination?

16. Please provide a description of Washington's quality assurance activities for these waivers, including the single State Medicaid Agency's role in the oversight and monitoring of these waivers.

Basic Waiver 0408

1. The waiver describes a benefit package which includes a limitation of $1,350 per year for any combination of the services. What happens when an individual reaches this cap? The state is proposing to offer emergency medical services to waiver participants. What happens when an individual then reaches the cap on emergency medical services? Will individuals be transitioned to another waiver? If so, what happens if that waiver does not have available capacity? Please provide documentation supporting that this fiscal limitation on the specified services is sufficient to maintain the health and welfare of the waiver participants. The services include:

   Behavior management and consultation
   Environmental adaptations
   Specialized medical equipment and supplies
   Occupational therapy
   Physical therapy
   Respite care
   Speech therapy
   Staff/family consultation and training
   Transportation

2. Please apply and answer the questions raised in no.1 above to the $6,500 cap per year placed on any combination of supported employment, community access supports, and person to person/community guide services.

3. If a participant is currently receiving services on the CAP Waiver and it is known that his/her service package in his/her plan of care exceeds the $1,350 limitation, will this become a barrier to his/her transition to the Basic Waiver? Will existing services be cut/reduced in order for individuals to participate in the Basic Waiver?

Basic Plus Waiver 0409

1. This waiver describes several benefit packages that include financial limitations. One benefit package includes an array of services with a benefit cap of $5,748 per year, plus the option to utilize an optional $6,000 in emergency services. Please describe the action to be taken when a waiver individual reaches the benefit package cap, as well as the cap on the emergency services option. Also, please provide documentation supporting that this fiscal limitation on the specified services is sufficient to maintain the health and welfare of the waiver participant. Services in this benefit package include:

   Behavior management and consultation
   Environmental adaptations
   Specialized medical equipment and supplies

Occupational therapy
Physical therapy
Speech therapy
Respite care
Staff/family consultation and training
Transportation
Community access
Community guide
Person to Person
Other medical services

2. There are two other benefit packages in this waiver: Personal Care with a benefit package cap of $13,535 plus the optional $6,000 emergency services option; and Habilitation with a benefit package cap of $9,500 (which may be increased to a maximum of $19,000 for individuals with high needs) plus the $6,000 emergency services option.

   Please apply and respond to the questions raised in #1 above regarding the financial cap on the benefit packages, as well as the financial cap on the Emergency Services option. Additionally, please make appropriate changes to the Habilitation benefit package reflecting any changes in the financial cap resulting from a decrease in services that were moved to another benefit package.

3. If a participant is currently receiving services on the CAP Waiver and it is known that the service package in his/her plan of care exceeds the benefit caps, will this become a barrier to his/her transition to the Basic Plus Waiver?

4. In Appendix B, Provider Qualifications/Standards, there are several provider types listed for Personal Care services. Among them are listed Adult Family Home, Adult Residential Center, Day Care Center, Foster Family Home, and Group Home. We generally see individual or agency providers for this service, not homes or centers, as this service would normally be provided as part of the cost of the individual being in the home or center. Please clarify how personal care services are being provided by these types of providers. Additionally, how is personal care in a foster care home different from what foster care providers are expected to provide under the foster care program?

Core Waiver 0410

1. One of the targeting criteria for the waiver is for an individual who "has had 18 or more days of inpatient psychiatric care in the past 12 months." (a)Do **all** of the individuals on the waiver meet ICF/MR level of care? (b)If the primary diagnosis of the individual is not MR/DD, does this

2. MR/DD waiver has the ability to meet their needs? (c)Will any individuals in this waiver have received services in a facility of 16 beds or more where more than 50% have a primary diagnosis of mentally ill prior to their enrollment that is in an Institution for Mental Disease (IMD)? (d)If the answer is yes to the previous question, will any individuals be released on condition of being enrolled onto this waiver? (e)Please indicate how the state derived 18 days as the criteria for determination.

3.Will individuals not participating in the waiver program and/or not Medicaid eligible receive any of the services as described in this waiver through another vehicle? If yes, are these services provided without charge to the individual?

4. Are foster care providers (listed in Appendix B-2 as family foster home and foster group care home) receiving payment from other sources besides the Medicaid waiver for the target population? If so, how are waiver services different from what these providers are expected to provide under the foster care program? How will the state ensure that there is no duplication of payment?

5. Washington has indicated that rates for residential habilitation are based on historical expenditures for waiver participants. Please provide us with a breakdown of how the state originally arrived at the rates for residential habilitation, which appear to be different based on provider type.

6. On May 23, Washington indicated to CMS its intent to move the children initially proposed to be served under the Public Safety Wavier into the Core waiver. However, since CMS had not received these changed pages at the time of the writing of this letter requesting additional information, CMS' questions in this document do not reflect this change. The CMS questions were written as if the state is still planning on including children in the Public Safety waiver. While this change has not been officially reflected in this waiver, we would like Washington to address the following questions if the state decides to proceed with making this change at a later time. WA indicated that providers in the Public Safety waiver have to meet extra requirements for certification and training. Will the providers of services for children served in the Core waiver that were initially proposed to be served under the Public Safety waiver also have to receive extra certification and training? If yes, please describe what this extra certification and training will consist of. Will Appendix G and the targeting criteria reflect the change? Also, all questions under the Public Safety waiver concerning health and welfare will need to be answered for this population in the Core waiver.

Public Safety Waiver 0411

1. Will individuals not participating in the waiver program and/or not eligible for Medicaid receive any of the services as described in this waiver

2. through another source? If yes, are the services provided without charge to the individual?

3. Will developmental disabilities be the primary diagnosis for individuals on this waiver? If not, what are the primary diagnoses? Do all the individuals on the waiver meet the ICF/MR level of care standard?

4. In response to our informal questions for this waiver, WA indicated that individuals on this waiver could be placed in this waiver as part of a program called the Sex Offender Sentencing Alternative. Is this program offered to individuals as an alternative to serving time in a correctional facility? Please send CMS information about the Sex Offender Sentencing Alternative program, including a description, funding sources, criminal justice system involvement, etc. How many individuals from this program are expected to be participants in this waiver?

5. Are individuals ordered to the waiver by the court? Will they have free choice between the institution and the waiver and free choice of waiver services?

6. For individuals moving into the community or to a different location in the community, please describe the requirements and process that will be used to determine where individuals on this waiver will reside. Will individuals live in secure/locked settings?

7. Washington's DDD Policy Manual specifies that if individuals have not been convicted of an offense, the professional assessment must determine that the person presents a risk and poses a danger to the community in order for the person to be identified as having community protection issues (Policy 15.01, Chapter 15, page 5). It appears that Medicaid-eligible persons who are identified as having community protection issues are then offered services under the Public Safety waiver. Please describe in detail the specific measures that will be taken initially and ongoing to ensure the health, welfare, and safety of individuals on this waiver and others who live with them and in residences within the surrounding community.

8. Please describe the state's process and procedures for handling threats or injuries to others by the waiver participants, including staff members and other individuals they live with in their homes and communities.

9. Will there be any instance when individuals on this waiver who have a history of committing sexual and/or other violent offenses may be living, working, or engaging in other daily activities near homes with children? If yes, will Washington take any additional measures in these instances to protect the safety of those in the community?

10. Please describe how the state will also protect the safety of providers for this waiver.

11. WA mentioned that providers must have specific certification that will enable them to provide services on this Public Safety waiver. What specific training, experience, knowledge, and abilities must staff have that will enable them to work with individuals on this waiver?

12. WA specified that individuals on this waiver will receive 24-hour supervision. Is this supervision 1:1? If not, what is the ratio of this supervision to waiver participants?

13. WA indicated that it sometimes takes a number of months to identify and contract with a qualified provider for individuals on this waiver. As Washington has indicated that residential habilitation waiver providers are providing this 24-hour supervision, how is the 24-hour supervision provided during these timeframes when qualified providers are not available? Where are individuals on the waiver living and how is health and welfare assured during these instances?

14. Other than providers, will any individuals on this waiver live with other individuals who are not on this waiver? If yes, are they living with individuals who are receiving services on other Washington HCBS waivers? How will the state protect the health and welfare?

15. Will any individuals on this waiver have received services in a facility of 16 beds or more where more than 50% have a primary diagnosis of mentally ill (that is in an IMD) prior to their enrollment? If yes to either of these questions, will any individuals be released on condition of being enrolled onto this waiver?

16. Washington has listed 13 different provider types under the Appendix B-2 provider qualifications for residential habilitation. Please describe all of the residential habilitation providers/locations for this waiver, and since they are not all listed in the Factor D chart of Appendix G, under which category will payment be received. If a category exists that is not reflected in Appendix G, this Appendix should be amended.

17. Are foster care providers (listed in Appendix B-2 as foster family home, family foster home, foster group care home) receiving payment from other sources besides the Medicaid waiver? If so, how are waiver services different from what these providers are expected to provide under the foster care program? How will the state ensure that there is no duplication of payment?

18. Please provide a description of the state's procedures for handling complaints and the process for handling critical incidents such as abuse and neglect.

19. Washington has indicated that rates for residential habilitation are based on historical expenditures for waiver participants. Please provide us with a breakdown of how the state originally arrived at the rates for residential habilitation, which appear to be different based on provider type.

20. WA has indicated its intent to resubmit Factor D estimates in Appendix G, which currently appears to indicate that although 494 persons are expected to receive waiver services in year one, only 436 are estimated to receive habilitation services in total (residential, day and/or supported employment) with similar estimations in years two and three. CMS will review this revised data once submitted.

21. Page 208 appears to be a duplicate of page 210. Please delete one of them or explain.